

*In the Matter of Ciro Mangione, City of Newark*  
CSC Docket No. 2009-3315  
**(Civil Service Commission, decided June 9, 2010)**

The appeal of Ciro Mangione, a Police Lieutenant with the City of Newark,<sup>1</sup> of his six working day suspension, on charges, was heard by Administrative Law Judge James A. Geraghty (ALJ), who rendered his initial decision on March 11, 2010. Exceptions were filed on behalf of the appointing authority and cross exceptions were filed on behalf of the appellant.

Having considered the record and ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on June 9, 2010, accepted and adopted the Findings of Fact as contained in the attached initial decision, but did not adopt the recommendation to reverse the six working day suspension. Rather, the Commission upheld the penalty.

## **DISCUSSION**

The appellant was issued a six working day suspension<sup>2</sup> on charges of violation of rules regarding care of property, misuse of public property, and disobedience to orders. Specifically, the appointing authority asserted that the appellant brought his department issued firearm out-of-state on non-official business to a racetrack in Delaware, contrary to written orders. Additionally, as the appellant was leaving the location, he placed his pouch containing his firearm on the hood of his car trailer. The firearm fell and was lost. The firearm was subsequently returned to the appellant. Upon the appellant's appeal to the Commission, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case.

In the initial decision, the ALJ indicated that there was no dispute that the appellant brought his firearm out-of-state and lost his weapon, since he admitted to that fact. The ALJ stated that the appellant "unquestionably" violated the Newark Police Department's rules and Civil Service law. However, the appellant had moved for summary decision on the uncontested facts, contending that he was entitled to dismissal of the charges as a matter of law because the Preliminary Notice of Disciplinary Action (PNDA) was not issued by the Police Chief, contrary to the terms of an October 7, 2008 consent order issued by the Superior Court of New Jersey, Law Division. Rather, the Deputy Police Director issued the PNDA on October 24, 2008. In this regard, the consent order, which involved the Superior

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<sup>1</sup> The appellant retired effective May 31, 2010. He was appointed as a Police Officer with the City of Newark effective May 20, 1968.

<sup>2</sup> It is noted that the appellant forfeited six vacation days in lieu of the suspension.

Officers' Association, the City of Newark, the Police Director, and Chief of Staff, stipulated that the Police Chief would issue PNDAs and the appointing authority would issue the Final Notices of Disciplinary Action, consistent with the final determination of the Appropriate Authority. The Police Director was designated as the Appropriate Authority in the consent order. It is noted that the City of Newark indicates that the appointing authority in this matter is the Police Director. Additionally, there is no provision in the consent order which would invalidate the charges against an employee if an official other than the Police Chief signed the PNDA. After a departmental hearing on March 9, 2009, the Police Director issued the PNDA suspending the appellant for six working days. Prior to that, on January 7, 2009, the City of Newark amended its ordinance and abolished the position of Police Chief. It is further noted that on March 24, 2010, the consent order was vacated by the Superior Court due to the abolishment of the Police Chief position. In addition to the foregoing, the ALJ found that the Police Chief never issued a retroactive amendment to the PNDA, ratifying the act of the Deputy Police Director.

Therefore, the ALJ determined that, considering the law that a municipal Police Chief's duties include discipline of officers and the October 7, 2008 consent order that the Police Chief would issue PNDAs, the action of the Deputy Police Director had been *intra vires* and the procedural defects could have been cured by the Police Chief. However, the Police Chief never ratified the PNDA since his office was abolished before the PNDA could be ratified. In support of his determination, the ALJ cited *In the Matter of Justo Delgado*, Docket No. A-5463-07T3 (App. Div. October 15, 2009). In that case, the Superior Court of New Jersey, Appellate Division, affirmed the Commission's decision to uphold the removal of an appellant where charges were issued by the Deputy Director of the Department of Public Works, and the Director and Commissioner of the Department of Public Works, who had the authority to issue charges against employees, impliedly ratified the discipline. Consequently, the ALJ concluded that the disciplinary action taken against the appellant in the instant matter was invalid and he recommended that the suspension be rescinded.

In its exceptions, the appointing authority argues that the PNDA was properly issued by a designee of the appointing authority and any perceived defect was cured. In that regard, it maintains that the Police Chief position had been abolished and the Police Director had full authority over the Police Department at the time the PNDA was issued. The appointing authority further contends that by signing the PNDA, the Police Director ratified the PNDA. Furthermore, it asserts that the appellant's motion for summary decision at the conclusion of testimony was procedurally defective. It relies on *N.J.A.C. 1:1-12.5(a)*, which provides that a motion for summary decision "must be filed no later than 30 days prior to the first scheduled hearing date or by such date as ordered by the judge." Therefore, it requests that the Commission uphold the six working day suspension or, alternatively, increase the penalty due to the egregiousness of the violation.

In response, the appellant relies on the decision of the ALJ that the PNDA was not effective and not procedurally cured. Therefore, it requests that the Commission adopt the ALJ's recommendation to rescind the penalty.

Upon its *de novo* review, the Commission disagrees with the ALJ's assessment of this matter. Initially, the Commission does not take issue with the appellant's timing on the motion for summary decision. *N.J.A.C.* 1:1-12.5(a) includes a discretionary period: "as ordered by the ALJ." Thus, in this case, although there was no specific order, the ALJ apparently accepted the motion, which is within his discretion to do so. Regarding the facts of this case, there is no dispute that the appellant brought his firearm out-of-state for non-business purposes, which is prohibited by the Newark Police Department rules, and that he lost his firearm. Based on these uncontested facts, a decision could have been rendered as to the appellant's guilt or innocence. However, the ALJ found that the charges against the appellant were invalid as they were not issued by the Police Chief as stipulated in the October 7, 2008 consent order. Initially, there is no requirement in Civil Service law or rule that the Police Chief must sign disciplinary notices. Moreover, the Commission finds that any deficiencies were cured by the Police Director's issuance of the FNDA on March 9, 2009. On January 7, 2009, the position of Police Chief was abolished, thus vesting authority over police matters with the Police Director. The Police Chief no longer had the power to ratify. By signing the FNDA, the Police Director ratified the charges against the appellant. Furthermore, the Commission notes that the appellant was offered his due process, as he was notified of the charges against him and received a departmental hearing prior to issuance of the FNDA. Additionally, the consent order did not provide for an invalidation of the charges if an official other than the Police Chief signed the PNDA. Therefore, under these circumstances, there is not a sufficient basis to dismiss the charges against the appellant.

As to the appellant's guilt, it is clear that he violated the rules regarding care of property, misuse of public property, and disobedience to orders. He admitted to bringing his department issued firearm out-of-state on non-official business, contrary to written orders, and lost his weapon. His retrieval of his weapon does not mitigate his guilt. Thus, the Commission finds that the charges against the appellant were sustained.

Regarding the penalty, the Commission's review is also *de novo*. In addition to its consideration of the seriousness of the underlying incident in determining the proper penalty, the Commission also utilizes, when appropriate, the concept of progressive discipline. *West New York v. Bock*, 38 *N.J.* 500 (1962). In determining the propriety of the penalty, several factors must be considered, including the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record. *George v. North Princeton Developmental Center*, 96

*N.J.A.R. 2d* (CSV) 463. However, it is well established that where the underlying conduct is of an egregious nature, the imposition of a penalty up to and including removal is appropriate, regardless of an individual's disciplinary history. *See Henry v. Rahway State Prison*, 81 *N.J.* 571 (1980). In the present case, a review of the appellant's prior disciplinary record is not necessary. The loss of a weapon and the failure to adhere to a rule regarding the carrying of a firearm across State borders cannot be taken lightly. The appellant's infractions were serious and he should be subject to major discipline. The Commission emphasizes that a municipal Police Officer is a special kind of public employee:

His primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public . . . *See Moorestown v. Armstrong*, 89 *N.J. Super.* 560, 566 (App. Div. 1965), *cert. denied*, 47 *N.J.* 80 (1966). *See also In re Phillips*, 117 *N.J.* 567 (1990).

The appellant failed to exercise good judgment in this matter. Nonetheless, the Commission notes that the appellant served as a law enforcement officer with the City of Newark for over 40 years. Balancing the seriousness of his offense and his length of service, the Commission does not find a sufficient basis to increase the appellant's penalty. Accordingly, under these circumstances, the imposition of major discipline of a six working day suspension was appropriate.

## **ORDER**

The Commission finds that the action of the appointing authority in imposing a six working day suspension was justified. Therefore, the Commission affirms that action and dismisses the appeal of *Ciro Mangione*.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.